UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GRANT IMPORTING & DISTRIBUTING CO., INC., HAYES BEER DISTRIBUTING COMPANY, L&V DISTRIBUTORS, INC., CHICAGO BEVERAGE SYSTEMS LLC, JOSEPH MULLARKEY DISTRIBUTORS, INC., TOWN & COUNTRY DISTRIBUTORS, INC., KOZOL BROS., INC., FRED W. LOSCH BEVERAGE CO., SCHAMBERGER BROS., INC.,	)	
Plaintiffs,	)	
vs.	)	**No. 08 CV 01269**
AMTEC INTERNATIONAL OF NY CORP., EUROPEAN BEER IMPORTERS, INC., and ADVANCED BRANDS & IMPORTING CO., INC., d/b/a STAR BRAND IMPORTS,	)	
Defendants.	)	

PLAINTIFFS' REPLY TO AMTEC'S RESPONSE TO PLAINTIFFS' SUPPLEMENTAL MOTION TO REMAND

NOW COME the Plaintiffs, **GRANT IMPORTING & DISTRIBUTING CO., INC., HAYES BEER DISTRIBUTING COMPANY, L&V DISTRIBUTORS, INC., CHICAGO BEVERAGE SYSTEMS LLC, JOSEPH MULLARKEY DISTRIBUTORS, INC., TOWN & COUNTRY DISTRIBUTORS, INC., KOZOL BROS., INC., FRED W. LOSCH BEVERAGE CO., and SCHAMBERGER BROS., INC.,** by and through their attorneys, Bruce M. Bozich, LAW OFFICES OF BOZICH & KORN and Daniel C. Meenan Jr., Joseph R. Lemersal, KRALOVEC MEENAN LLP, and for their Reply to Amtec's Response to Plaintiffs' Supplemental Motion to Remand ("Response"), state as follows:

ARGUMENT

On page one of its Response, Amtec argues that Chicago Beverage Systems LLC's (hereinafter "Chicago Beverage") domicile is "unknown". Yet, on page four of its Response, Amtec admits that Chicago Beverage is a Delaware limited liability company, whose sole member is also another Delaware limited liability company.[1] Therefore, Amtec's argument that Chicago Beverage's domicile is unknown is, at best, baseless. Further, the issue of the domicile of Chicago Beverage is clearly set forth in Exhibit 1 to Plaintiffs' Motion to Remand.

Similarly, Amtec inaccurately states that the only Defendant against whom any claim was asserted in the original Complaint was Amtec. A review of the original Complaint indicates that European Beer Importers was named as a Defendant in virtually every single paragraph alleging Amtec as a Defendant. In other words, the same damages were sought against European Beer Importers as were sought against Amtec throughout the original Complaint. An opportunity to further investigate and discover some relevant facts was the reason that leave was sought, and granted, to file the Amended Complaint.

From the above inaccuracies, it becomes clear that the entire Response of Amtec is to attempt to put up a smokescreen to divert the Court's attention away from the fact that there was no lawful basis for Amtec's removal of this cause to Federal Court. From the outset, Defendant Amtec knew that European Beer Importers was an essential Defendant and party to this case. Defendant Amtec knew at all times that Defendant European Beer Importers was an Illinois corporation. In fact, it was Defendant Amtec that registered European Beer Importers as the wholesaler/distributor for Zywiec beer in Illinois in its Registration with the Illinois Liquor Commission, as seen in Exhibit C attached to the Amended Complaint.

Similarly, Defendant makes no attempt in its Response to even respond to the accusations of the Amended Complaint that European Beer Importers was wholly-owned by Amtec, or shared and occupied the same office space in Melrose Park. Further misrepresentations by Amtec can be seen in its argument that the Amended Complaint is the first time that the Plaintiffs allege that Advanced Brands has liability under IBIFDA. Again, that is patently false, as allegations to that effect are contained in Paragraph 31 of the original Complaint. Additionally, the same claims under IBIFDA were alleged against European Beer Distributors in the original Complaint, again in Paragraph 31, and not for the first time in the Amended Complaint.

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[1]The allegations of paragraph no. 8 of the Amended Complaint establish that a Delaware LLC is the sole member of Chicago Beverage. The citizenship of the single member of Chicago Beverage is not a pertinent consideration, given the allegations of the Amended Complaint and the arguments made in the motion to remand. The named defendant is a Delaware citizen for purposes of diversity considerations.

Defendant further argues that it is outrageous for Plaintiffs to assert that European Beer Importers is an importer. Again, Defendant Amtec misconstrues the language of the Amended Complaint, as Paragraph 2 of the Amended Complaint alleges that "it is further believed that Amtec or EBI have recently been granted the exclusive right to import and distribute Zywiec beer in the United States".

Amtec cites the ***Nagy v. Berkshire Life Ins. Co. of America*** case in support of its argument that Advanced Brands and/or European Beer Importers has been fraudulently joined as a Defendant by Plaintiffs to defeat diversity jurisdiction. It is interesting that Defendant cites to ***Nagy*** in support of its argument to defeat remand. In ***Nagy,*** the Court granted the motion for remand by plaintiffs, and found that the defendant did not meet its burden to establish diversity jurisdiction. The ***Nagy*** case similarly stated that the standard for defeating a motion for remand for a non-resident defendant is to show that there is "no reasonable possibility that a state court would rule against an out-of-state defendant". ***Nagy*** further indicated that the out-of-state defendant bore a heavy burden in trying to establish federal jurisdiction based on fraudulent joinder, and ***Nagy*** further stands for the principle that doubts to jurisdiction should be resolved in the plaintiff's favor.

Amtec argues that Plaintiffs forum-shopped by filing the matter originally in State Court, since Plaintiffs have not asked this Court for a temporary restraining order to stop the distribution of Zywiec beer in Illinois, pending the Court's Decision on the Motion to Remand. It is the Plaintiffs' position that the Federal Court does not have jurisdiction of this matter. To suggest that Plaintiffs should submit the TRO issue to the Federal Court is illogical - factually, legally and as a matter of the Plaintiffs' preferences.

Defendant Amtec further suggests that European Beer Importers is not a "successor brewer", and argues that this should preclude remand. As with other of its arguments, this is a substantive attack on the merits of the Plaintiffs' claims, not anything that is properly considered in the context of the request for remand. The argument is also based on an intentional effort to misstate the section of the statute relied on.

The Illinois Beer Industry Fair Dealing Act, 815 ILCS 720/1.1(6) the "Act" or "IBIFDA") defines "successor brewer" as "**any person who in any way obtains the distribution rights that a brewer or master distributor once had to manufacture or distribute a brand or brands of beer, whether by** merger, purchase of corporate shares, purchase of assets, or any other arrangements". Amtec would like to ignore the portion of the Act referenced in bold and underlined above, as it does not include that language in its argument. It wold also like to ignore the "or any other arrangements." provision as well. In any event, these are substantive defenses to the Plaintiffs' claims, and are not responses to matters raised in the motion.

Advanced Brands was the previous master distributor and/or importer of Zywiec Beer into Illinois and the United States. The Act does not require Amtec or European Beer Importers to have acquired the distribution rights of Zywiec Beer directly from Advanced Brands to fall within the parameters of the Act. Again, the Act simply says that a successor brewer is any person who "**in any way obtains the distribution rights"** that a brewer or distributor once had. It is clear that Amtec and/or European Beer Importers now have the distribution rights for Zywiec beer into Illinois.

The Act was meant to provide and protect beer wholesalers, such as all of the Plaintiffs, from brewers, master distributors, or successor brewers who attempt to terminate the rights that those wholesalers have to distribute malt beverages in Illinois. European Beer Importers' position as the master distributor for Illinois makes it an essential party to this cause of action. Again, the Act specifically says that the rights can be acquired by "any arrangement", and does not mandate a transfer of distribution rights from Advanced Brands to Amtec or European Beer Importers before Plaintiffs can seek protection under the Act.

Amtec argues that the ***Shestokas Distributing, Inc. v. Hornell Brewing Co., Inc.*** decision supports its objection to the remanding of this matter to State Court. The ***Shestokas*** decision is neither on point nor relevant to this case. In ***Shestokas***, the right to manufacture beer was crucial in the Court's decision as to whether or not the plaintiff could maintain an action under IBIFDA. In the present case, the right to manufacture beer is not in question, but rather the right to wholesale Zywiec Beer in Illinois.

Amtec further argues that Advanced Brands is a shell defendant, clairvoyantly joined for improper reasons, *i.e.* to defeat a diversity question (there was no need for diversity in the Circuit Court of Cook County, the Plaintiffs' forum of choice; rhetorically, why would the Plaintiffs have engaged in the asserted, anticipatory misdirection?). Advanced Brands may or may not be ultimately be subject to equitable remedies, or liable to the Plaintiffs for damages; that remains to be seen. Advanced Brands was included in the original Complaint and the Amended Complaint because it was the sole importer and distributor of Zywiec Beer into the United States, when all of the Plaintiffs became wholesalers of that brand. Additionally, many of the Plaintiffs paid large sums of money to Advanced Brands to get the rights to wholesale Zywiec Beer. Both the Complaint and the Amended Complaint indicate that Grant Importing paid approximately $350,000.00 for its wholesale rights to its territory to distribute Zywiec Beer.

Amtec's succession to Advanced Brands as the importer of this beer may or may not give Amtec the right to appoint a master distributor, such as European Beer Importers, for the State of Illinois. However, any such right in Amtec does not allow Amtec to ignore the rights of the Plaintiffs as beer wholesalers under the Act. Again, the issue addressed in the Complaint is not who the appointed distributor is for the State of Illinois for Zywiec Beer, but what are the rights of Plaintiffs as wholesalers. The term "distributor" is not even defined under the Act. The term "master distributor" is defined, and both Amtec and European Beer Importers are master distributors as that term is defined under the Act.

These are all, however, considerations going much more (if not exclusively) to the substantive disputes that will be litigated, than to this Court's jurisdiction. Such arguments really have no place in the matter before the Court.

Finally, Defendant Amtec argues at some length that Counts IV, V and VI of the Complaint form no separate basis to support Plaintiffs' cause of action. The cases discussed by Defendant in support of its argument are irrelevant and inapplicable to the present case. In that there was no basis for Amtec to remove this case to the Federal Court in the first instance, Amtec's argument relating to the causes of action stated in Counts IV, V and VI of the Complaint need not be delved into for the purpose of this Motion to Remand. Amtec is not presenting a motion to dismiss; it is supposed to be responding to a motion to remand.

CONCLUSION

By its misapplication of law and deliberate misconstruction of the language of Plaintiffs' Complaint and Amended Complaint, it is clear that Defendant Amtec has not sustained the heavy burden that it bears to defeat the Motion to Remand. All but one of the named Plaintiffs, and Defendant European Beer Importers, a necessary party to this litigation, are Illinois citizens for the purpose of analyzing diversity of citizenship, thereby defeating Amtec's removal of this cause to federal court. Similarly, Plaintiff Chicago Beverage Systems and Defendant Advanced Brands are both Delaware citizens, and therefore there is no requisite diversity for this Court to have jurisdiction over this cause of action. Amtec wrongfully removed this cause to federal court knowing that Defendant European Beer Importers, a company it controls and shares offices with, was an Illinois corporation, and therefore knowing that there never was complete diversity among the parties.

Plaintiffs therefore pray for the entry of an Order remanding this action forthwith to the Circuit Court of Cook County, and for a further finding that the Defendants' removal of this matter to Federal Court was wrongful, and for an Order allowing Plaintiffs to recover their attorney's fees and costs incurred herein.

LAW OFFICES OF BOZICH & KORN

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CERTIFICATE OF SERVICE

The undersigned attorney for the Plaintiffs certifies that he caused the foregoing document to be served on all counsel of record, through the Court's Electronic Case Filing System, on April 23, 2008.

S/ Daniel C. Meenan Jr.

DANIEL C. MEENAN, JR.